

7-03 MPT - Example 1

Brief for Plaintiff, Vargas in Vargas v. Monte

Statement of Facts

Plaintiff Vargas is suing Defendant Monte for timber trespass. In 1906, Plaintiff's grandfather wrote a letter to Defendant's grandfather, attempting to delineate the boundary line between their property. In 2002, this dispute arose after Defendant Monte removed trees from a disputed strip of land. Plaintiff respectfully directs the court's attention to the statement of stipulated facts.

Argument

I. Because Defendant Monte has produced no evidence showing the 1906 agreement was accepted for the statute of limitations time period, she has not established the defense of agreed boundary and is liable for timber trespass.

By removing the trees from Vargas' land, Monte is liable for timber trespass, and agreed boundary is no defense. To successfully establish this defense, Monte must prove 4 elements. See Blackjack Lumber Co. v. Pearlman.

First, Monte must establish that there was uncertainty about the true boundary line. Her sole evidence on this point is Vargas' grandfather's letter indicating confusion. However, the letter does indicate that there were still blaze marks from the 1879 survey.

Even if this court accepts that there was confusion as to the boundary in 1906, Monte has no evidence of an agreement. Her sole evidence is the letter, which was written and signed by Vargas' grandfather only. There is no evidence that her grandfather consented. The parties do not know if Monte's grandfather ever objected, or agreed.

Monte must also prove that the boundary is identifiable on the ground. While the deer path referred to in the 1906 letter may have existed then, there is no other reference to it in the record. The landscape has changed over the years, as Mr. Vargas and Stan Linhart indicated. Indeed, Monte's own testimony indicates that the boundary line she was using were the 1879 blaze marks, not the deer path mentioned in the 1906 letter. Therefore, Monte cannot prove that the boundary is identifiable.

Monte can also not prove that the boundary was accepted for the statute of limitations. She has produced no evidence to meet her burden on this affirmative defense. Indeed, the only testimony on point – the confusion between the parties on the boundary line and Monte's use of the 1879 blaze marks instead of the 1906 agreement on the deer path – indicate that the agreement, if it existed, was not acquiesced to for the limitations period.

Because Monte has admitted that she took the trees off Vargas' property, and because she cannot prove the elements of the agreed boundary defense, Monte is liable for timber trespass.

II. Because Monte had knowledge of Vargas' claim to the land and continued to remove trees, her trespass is willful and malicious and treble damages should be awarded.

Because Monte was malicious in the removal of trees from Vargas' land, treble damages should be awarded. Under §3346, the court has discretion to award treble damages if defendant acted maliciously. Anderson v. Flush. Treble damages are appropriate in this case because Monte's actions were malicious.

The requisite malice state of mind may be inferred from the circumstances if defendant acted with reckless disregard of or indifference to the rights of others. Hardway Lumber v. Thompson.

Monte showed reckless disregard to Vargas' rights. She did not begin logging on Vargas' land until March of 2000. Two months later, she received the letter indicating the land survey. Despite the parties numerous discussions over the appropriate boundary line and the availability of other trees to harvest, Monte continued cutting on Vargas' land. During this time, her actions amount to at least indifference to Vargas' rights, sufficient to support a finding of malice. Hardway

In the fall of 2000, Monte received actual notice from the land surveyors (specifically, Jane Norman) that she was on Vargas' land. Despite this knowledge, she continued to cut down approximately 700 more trees (even after Vargas' calls and despite the no trespassing signs). When a defendant has been told repeatedly of the dispute, and continues to log nevertheless, a finding of treble damages is appropriate. Guemsey v. Wheeler.

Under §3346, actual damages are appropriate only if defendant was relying on a survey. Monte's defense is the 1906 agreement, which was ineffective. Furthermore, in a case such as this where there were numerous discussions between Monte & Vargas as to the location of the boundary line, Monte was not relying on a survey, but showing at least casual & involuntary trespass. Anderson. Even if she was not acting with malice (because of the agreement), her trespass was casual and involuntary, and the court must award at least double damages. Anderson.

Considering Monte's knowledge of the disputed boundary line, the difficulty in determining the line, the messages from Vargas and the no trespassing signs, the actual knowledge that she was on Vargas' land from the government survey, the totality of the circumstances illustrate that Monte acted with reckless disregard of and indifference to Vargas' rights, and the court should, in its discretion, award treble damages to Vargas.

7-03 MPT - Example 2

Les Vargas, Plaintiff)	
vs.)	Civ. Case #12345
)	
Carla Monte, Defendant)	

STATEMENT OF STIPULATED FACTS

The parties, plaintiff Les Vargas, and defendant Carla Monte stipulate to the following as true: Plaintiff Les Vargas owns several hundred acres in Cleveland County, Franklin, and is adjoined by the property neighboring by property owned by defendant Carla Monte. An original survey has been conducted prior to the issuance of the original patents to both Mr. Vargas and Ms. Monte's predecessors in interest, by the U.S. General Land Office. This survey delineated a one quarter mile boundary common to Mrs. Monte and Mr. Vargas, and it was marked by blazing trees and wooden posts.

Over time, the boundary has deteriorated, and the true location of the property line became unknown. Between March 2000 and January 2002, Ms. Monte cut and removed approximately 700 grown ponderosa pine trees from an area of land a BLM survey at that time determined to be Vargas property.

I. BY CUTTING TREES FROM MR. VARGAS' PROPERTY, WITHOUT HIS PERMISSION, MS. MONTE ACTED WITH RECKLESS DISREGARD TO MR. VARGAS RIGHTS AS A LANDOWNER.

A. THE LETTER DOES NOT ESTABLISH A BOUNDARY AGREEMENT.

Mr. Vargas testified at trial that he and Mrs. Monte had never conclusively established an agreement to the proper location of the boundary. Mrs. Vargas, on the other hand, has for her justification, merely a letter from her grandfather that purports to have established an agreement with Mr. Vargas' predecessor in interest, his grandfather.

In order to facilitate the resolution of boundary line disputes, courts in Franklin have permitted persons to create boundary agreements in lieu of legal action. To qualify as a defense in a trespass action, the defendant can use a boundary agreement by showing (1) uncertainty as to the location of a boundary line, (2) an agreement between adjoining landowners, and (3) agreed boundary identifiable on the ground, (4) acceptance of the agreement that would satisfy the period for bringing an action in trespass (5 years). If the elements are met, the defense is established even where the true line is ascertainable.

Here, Ms. Monte merely proffers a letter dated 1906 that purports to be conclusive evidence that the property line was agreed to by their respective grandparents. However, there is no evidence of an acceptance by Mr. Vargas grandfather. The defense, or justification, that Mrs. Vargas relies on requires an acceptance by both landowners. Mr. Monte's letter can only be construed as a proposal. There is nothing in the record Mrs. Monte can refer to which would indicate that the original landowning Vargas expressly or impliedly accepted the proposal.

If, however, acceptance can be established through implication (as if through silence), Mrs. Monte is not justified, because the agreed boundary must be identifiable on the ground. However, Bureau of Land Management Surveyor Stan Linhart testified that the 19th Century blazings and markings were

completely “messed up,” which is why the Bureau was called in to re-survey the property line. Mrs. Monte was aware of this, because she received notice from the Bureau of it surveying.

Furthermore, Mr. Vargas testified that neither of them had properly agreed to set the property line. Therefore, the lack of an identifiable boundary which would support Mrs. Vargas claim as to an agreement between the predecessors in interest can not be supported by the facts.

B. MRS. MONTE’S KNOWLEDGE OF MR. VARGAS’ DESIRE TO KEEP HIS PROPERTY FREE FROM LOGGING SHOWS MRS. MONTE’S DISREGARD FOR HIS RIGHTS

When a person acts with reckless disregard or with reckless indifference to a neighboring landowners rights, that person is deemed to have acted with malice upon his trespassing. Because there was no boundary line agreement between the Monte’s and the Vargases, the trees cut were located on the Vargas property, and Mrs. Monte’s cutting of them constitutes a trespass.

Her trespass, however, was reckless in nature, and satisfies the requirement for reckless disregard for his rights. Mr. Vargas testified that he had told Mrs. Monte that he did not wish to cut and log the trees on his property, and that Mrs. Monte wanted to be the first to know if he changed his mind.

Despite this, Mrs. Monte cut the trees. Mr. Vargas took action in any way a reasonable landowner would in this situation, he called, left messages, and posted “No trespassing” signs. Mrs. Monte ignored these entreaties, and brushed aside Stan Linton’s warnings not to continue the logging because she was on the Vargas property. Nevertheless, Mrs. Monte continued logging, taking approximately 700 trees. Her actions demonstrate wrongful and malicious trespass, because she recklessly ignored the rights of Les Vargas. Therefore, Mr. Vargas is entitled to receive treble damages.

C. EVEN IF MRS. MONTE’S CONDUCT WAS NOT MALICIOUS, IT WAS CASUAL AND VOLUNTARY, ENTITLING MR. VARGAS TO DOUBLE DAMAGES

If Mrs. Monte was not malicious in her trespass, her conduct was casual and involuntarily in its disregard to Mr. Vargas’ rights as a landowner. Mrs. Monte testified that she thought he (Mr. Vargas) would not mind her logging along the common boundary line. Yet, as has been stated, that boundary line was not clearly marked; either by survey or agreement, if indeed the agreement can be said to have been found.

Thus, Mrs. Monte’s cavalier attitude as to the location of the line, coupled with her knowledge.

7-03 MPT - Example 3

(CAPTION)

STATEMENT OF FACTS

Les Vargas and Carla Monte share a one-quarter mile border to the east of Vargas' and to the west of Monte's. Both parties have stipulated to a Statement of Stipulated Facts regarding the dispute regarding the boundary line between both parties' property.

ARGUMENT

DEFENDANT CARLA MONTE IS LIABLE FOR TIMBER TRESPASS BY ENTERING LES VARGAS' LAND AND CUTTING DOWN NEARLY 700 TREES.

Defendant Carla Monte asserts that she is not liable for timber trespass because of the affirmative defense of the doctrine of agreed boundary. This defense is not applicable to the Defendant as she knowingly entered Vargas' property and cut down his timber.

In order to assert the doctrine of agreed boundary, the Defendant must show 1) an uncertainty about the true boundary line; 2) an agreement about the true boundary line; 3) an agreed upon boundary that is identifiable on the ground; and 4) acceptance and acquiescence to the agreed-upon boundary for a period equal to the statute of limitations. Blackjack Lumber Co. v. Pearlman (Franklin Ct. App. 1986). The statute of limitations is five years. Franklin Civil Code §3346(c).

In cases of uncertainty, courts look with favor upon private agreements fixing and marking boundary lines. The doctrine of agreed boundary applies if parties fail to set along the true boundary line due to mistake.

While Defendant satisfies element one – an uncertainty about the true boundary line – she fails to satisfy the other three elements of the agreed boundary defense.

While the letter of 1906 (Defendant's Exhibit A) indicates a proposal of a boundary line, it does not evidence an agreement between the parties as to the boundary line and thus fails to satisfy the second element of the affirmative defense.

Defendant also cannot show acceptance and acquiescence of the agreed upon boundary for five years because Defendant only committed trespass to timber on Vargas' land from March 2000 to January 2002, (Stipulated Facts ¶9), well short of the five-year period of acquiescence.

Lastly, and most importantly, Defendant cannot assert that the agreed upon boundary that she alleges exists is "identifiable on the ground". As Mr. Linhart testified prior to his survey in the fall of 2001: "Before the survey, the boundary line was a real mess and nobody knew exactly where it was located . . . the section lines on the trees during the original survey back in the 1800s had deteriorated ." (Direct of Linhart by Jane Norman).

Not only was the deteriorating boundary line problem plaguing the Vargas-Monte line, it was a county-wide problem with boundaries. (Direct of Linhart.)

Additionally, if, as Defendant may assert, the boundary was the line between Big Rock and Bella Creek, it was not identifiable due to the shift of more than 100 feet by the creek bed (Cross of Linhart by William Warren). Thus, using this method does not make the boundary line identifiable by using the creek bed.

Due to Defendant's inability to satisfy the four elements of the agreed boundary defense, Defendant is liable for trespass to timber as indicated by her cutting timber 100 feet into Vargas' property.

DEFENDANT CARLA MONTE IS LIABLE FOR DAMAGES FOR TRESPASS TO TIMBER.

In Franklin County, one may receive treble, or double damages for a trespass to timber. Franklin Civil Code §3346 (a-b). The purpose of Civil Code §3346 is to protect trees and timber. Anderson v. Flush (Franklin Ct. App. 1953).

In order to receive treble damages, the trespass must be willful and malicious. Anderson. Treble damages are punitive. Anderson. Malice may be found when a defendant performs an act with reckless disregard of or indifference to the rights of others. Hardway Lumber v. Thompson (Franklin Ct. App. 1971).

In Guernsey v. Wheeler (Franklin Ct. App. 1966), the court found that because a trespass was neither casual or involuntary [the standard for double damages] and was committed with a reckless disregard of and an indifference to the rights of the owner by logging when he knew of a boundary conflict, the defendant was liable for treble damages.

As Mr. Linhart testified, Linhart notified Monte she was cutting timber and logging on Vargas' land. (Linhart Direct by Jane Norman). According to Mr. Linhart, she continued to log the next day despite his notice the day before. (Direct of Linhart by Jane Norman).

Further, Monte continued to log on Vargas' property after he posted "Do Not Trespass" signs where Monte had logged on his property. (Direct of Les Vargas by Jane Norman.) Monte also had notice that the boundary was in dispute as evidenced by the letter sent by the United States Department of the Interior to Monte in May of 2000. (Letter from Dept. of Interior) and by Monte's testimony that she began logging after receipt of such letter. (Cross of Carla Monte by Jane Norman).

This conduct displays a reckless disregard or indifference to rights of Vargas, the owner, similar to the defendant in Guernsey. Thus, Defendant should be liable to Les Vargas for treble damages caused due to the trespass of timber.

CONCLUSION

Defendant Carla Monte is liable for treble damages due to her trespass to timber on Plaintiff Les Vargas' land, as her conduct demonstrates a reckless disregard of and an indifference to the rights of the owner, Les Vargas, by logging in an area in which she knew of a boundary conflict.